

THE HON'BLE MS JUSTICE G.ROHINI

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WRIT PETITION No.26565 of 2005

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Dated 09-03-2006

Between:

Maddali Subba Rao.

..... PETITIONER

AND

The Station House Officer, Vijayawada,

And two others.

.....RESPONDENTS

THE HON'BLE MS JUSTICE G.ROHINI

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WRIT PETITION No.26565 of 2005

O R D E R:

This writ petition is filed seeking a Mandamus declaring the proceedings under Section 145 Cr.P.C. vide MC.No.13 of 2005 initiated by the second respondent in respect of the land to an extent of Ac.6-12 cents situated in R.S.Nos.162/1 and 162/2 of Royyuru Village, Thotlavallur Mandal, Krishna District, as arbitrary and illegal.

Heard the learned counsel for the petitioner, the learned Government Pleader for Home appearing for the respondents 1 to 3 and the learned counsel appearing for the respondents 4 to 7, who got themselves impleaded to the writ petition.

As can be seen from the material on record, it is not in dispute that the petitioner on the one hand and the respondents 4 to 7 on the other instituted different suits against each other making rival claims in respect of the land in question and the same are admittedly pending. As a matter of fact, S.A.No.710 of 2003, which arises out of O.S.No.350 of 1996 filed by the petitioner is pending in this Court in which interim order of status quo has been granted and the same is still in force. The grievance of the petitioner is that in spite of the fact that civil proceedings are pending, the second respondent has erroneously initiated proceedings under Section 145 Cr.P.C. which are impermissible in law.

The learned counsel for the petitioner while placing reliance upon a decision of the Supreme Court in *Ram Sumer Puri Mahant v. State of U.P. and others* contended that when civil litigation is

pending, criminal proceedings cannot be initiated in respect of the same property and that parallel criminal proceedings cannot be allowed to go on.

From the counter-affidavit filed by the Sub-Inspector of Police, Thotlavalluru Police Station, on behalf of the respondents 1 to 3, it is clear that on the basis of the complaint made by the respondents 4 to 7, Crime No.100 of 2005 has been registered and thereafter the Mandal Executive Officer on the basis of the report submitted by the first respondent initiated proceedings under Section 145 Cr.P.C. against both the parties, keeping in view the fact that there is standing crop in the land in question, to avoid law and order problem.

However, the learned counsel appearing for the respondents 4 to 7, across the Bar, submitted that in spite of the fact that the criminal proceedings are initiated, the petitioner has cut away the crops standing on the land in question.

Be that as it may, since admittedly S.A.No.710 of 2003 on the file of this Court, which arises out of O.S.No.350 of 1996 on the file of the Court of II Additional Senior Civil Judge, Vijayawada, and another appeal arising out of the decree and judgment in O.S.No.846 of 2002 on the file of the Court of I Additional Senior Civil Judge, Vijayawada, are pending in respect of the same subject matter, I am of the opinion that the impugned proceedings under Section 145 Cr.P.C. cannot be maintained.

In *Ram Sumer Puri Mahant v. State of U.P. and others* the Supreme Court, in identical circumstances held as under:

“ Challenge in this application is to the order of the Allahabad High Court refusing to interfere in its revisional jurisdiction against an order directing initiation of proceedings under S. 145, Criminal P.C. ('Code' for short), and attachment of the property at the instance of respondents 2-5. Indisputably, in respect of the very property there was a suit for possession and injunction being Title Suit No. 87/75 filed in the Court of the Civil Judge at Ballia wherein the question of title was gone into and by judgment dated Feb. 28, 1981, the said suit was

dismissed. The appellant was the defendant in that suit. According to the appellant close relations of respondents 2-5 were the plaintiffs and we gather from the counter affidavit filed in this Court that an appeal has been carried from the decree of the Civil Judge and the same is still pending disposal before the appellate court. The assertion made in the petition for Special Leave to the effect that respondents 2 to 5 are close relations has not been seriously challenged in the counter affidavit. When a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, we see hardly any justification for initiating a parallel criminal proceeding under S. 145 of the Code. There is no scope to doubt or dispute the position that the decree of the Civil Court is binding on the criminal court in a matter like the one before us. Counsel for respondents 2-5 was not in a position to challenge the proposition that parallel proceedings should not be permitted to continue and in the event of a decree of the Civil Court, the criminal court should not be allowed to invoke its jurisdiction particularly when possession is being examined by the civil court and parties are in a position to approach the civil court for interim orders such as injunction or appointment of receiver for adequate protection of the property during pendency of the dispute. Multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation. We are, therefore, satisfied that parallel proceedings should not continue and the order of the learned Magistrate should be quashed. We accordingly allow the appeal and quash the order of the learned Magistrate by which the proceeding under S. 145 of the Code has been initiated and the property in dispute has been attached. We leave it open to either party to move the appellate Judge in the civil litigation for appropriate interim orders, if so advised, in the event of dispute relating to possession. Appeal allowed.”

Following the ratio laid down in the above decision, the writ petition is disposed of declaring that the proceedings initiated under Section 145 Cr.P.C. vide M.C.No.13 of 2005 are arbitrary and illegal. However, it is made clear that this shall not preclude the petitioner as well as the respondents 4 to 7 to work out the appropriate remedy as available under law either in the suits already pending or by initiating

appropriate other proceedings. No costs.

(G. ROHINI, J)

Date:09-03-2006

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